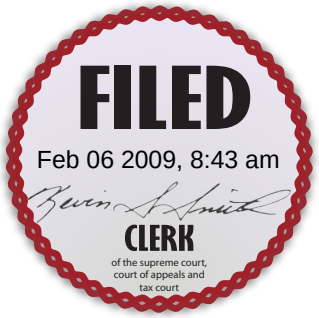

ATTORNEY FOR APPELLANT:

PAUL J. PACIOR
Noblesville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTHUR THADDEUS PERRY
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TERRY BEANBLOSSOM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A04-0809-CR-534
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William P. Greenaway, Judge
Cause No. 29D04-0612-CM-7811

February 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a bench trial, Terry Beanblossom was convicted of Operating a Vehicle While Intoxicated Endangering a Person (OWI),[1] a class A misdemeanor, and determined to be a Habitual Substance Offender (HSO).[2] The trial court sentenced Beanblossom to 365 days for the OWI conviction, all suspended, and enhanced the sentence by one year executed on the HSO. On appeal, Beanblossom challenges the sentence imposed. The State cross-appeals, challenging the court's imposition of concurrent sentencing for a sentence enhancement and the underlying offense.

We affirm and remand with instructions.

Beanblossom did not include the transcript of the bench trial in the record or any other documentation[3] from which we can glean the facts underlying the offense.[4] We therefore begin with the charging information. On December 11, 2006, the State charged Beanblossom with OWI, as a class A misdemeanor, and alleged that he was an HSO. A bench trial was held on April 20, 2008, at the conclusion of which the trial court found Beanblossom guilty of OWI and determined him to be an HSO. On May 2, 2008, the trial court sentenced Beanblossom to 365 days for the OWI conviction, all suspended to

[1] Ind. Code Ann. § 9-30-5-2 (West, Premise through 2008 2nd Regular Sess.).

[2] Ind. Code Ann. § 35-50-2-10 (West, Premise through 2008 2nd Regular Sess.).

[3] The State provides facts purportedly taken from the probable cause affidavit, complete with citations to the "Appendix of Appellee/Cross-Appellant 1". *Appellee's Brief* at 2. From what we can tell, however, the State failed to file its Appendix with this court.

[4] The only fact of which we are made aware is the level of Beanblossom's intoxication. At the sentencing hearing, the State referred to Beanblossom's level of intoxication as "A .32." *Transcript* at 17. In pronouncing the sentence, the trial court referenced Beanblossom's level of intoxication as being "three times the legal limit." *Id*. at 19. By our calculations, Beanblossom's blood alcohol content of .32 was four times the legal limit.

probation, and enhanced the sentence by one year executed on the HSO. Beanblossom filed the instant appeal, challenging his sentence in several respects.

Beanblossom argues that the trial court abused its discretion by failing to give an adequate sentencing statement and by overlooking significant mitigating factors. Beanblossom fails to recognize that a trial court is not required to enter a sentencing statement when imposing a sentence for a misdemeanor offense. *See Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) ("Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense."), *clarified on reh'g*, 875 N.E.2d 218. The trial court, therefore, cannot be said to have abused its discretion in this regard.

Even though the trial court was not obligated to give a sentencing statement explaining the sentence imposed, the trial court took the time to identify aggravating and mitigating circumstances and to express its concern over Beanblossom's level of intoxication. The trial court more than adequately explained the sentence imposed. The trial court also made clear that it considered the mitigating circumstances proffered by Beanblossom during the sentencing hearing. To be sure, the trial court acknowledged Beanblossom's medical problems and cited the fact that Beanblossom did not have any convictions in the ten years preceding the instant offense as a mitigating circumstance. Based on its assessment, the trial court was quite lenient in sentencing Beanblossom to a suspended term for the OWI offense and enhancing that sentence by the minimum term, i.e., one year, authorized by statute for an HSO determination. *See* I.C. § 35-50-2-10(f).

Beanblossom also argues that his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). "[R]evision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of *both* the nature of his offenses and his character." *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (emphasis in original).

We emphasize that it is Beanblossom's burden to persuade us that his sentence is inappropriate. *See Rutherford v. State*, 866 N.E.2d 867. Here, Beanblossom does not discuss the nature of the offense and has not provided us with the transcript of the bench trial from which we can assess the nature of the offense. Beanblossom has failed to carry his burden of persuading us that his sentence is inappropriate in light of both the nature of the offense and his character.

The State cross-appeals, asserting that remand is necessary for the trial court to correct a sentencing error. We agree. At the sentencing hearing the trial court imposed a 365-day suspended sentence on the OWI conviction and enhanced that sentence by 365 days, executed, for the HSO determination. In its sentencing order, however, the trial court indicates that the sentences are to be served concurrently. This is inappropriate. A finding

that a defendant is an HSO allows the trial court to enhance the sentence of the underlying offense. *See McIntire v. State*, 717 N.E.2d 96 (Ind. 1999); *St. Mociers v. State*, 459 N.E.2d 26 (Ind. 1984). The statute does not set forth an offense in and of itself, since such would invoke the prohibition against double jeopardy. *St. Mociers v. State*, 459 N.E.2d 26. The trial court is directed to correct this error in its sentencing order.

Judgment affirmed and remanded with instructions.

MAY, J., and BRADFORD, J., concur